Anderson v. Duncan, No. 01-15357

SILER, Circuit Judge, dissenting:

I respectfully dissent, for I believe that the state court's determination that Anderson understood the maximum sentence for the crime to which he was pleading was not "an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" nor was it based on "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). This quotation is from ADEPA, which requires us to give some deference to the state court's findings.

The petitioner relies primarily upon the decision in *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). In that case, however, the trial court that accepted the plea asked no questions of the defendant concerning his guilty plea and the defendant did not address the court. This record provides much more, although it does show a period of silence after the court asked the petitioner if he understood this sentence. The colloquy between the court and the petitioner could have been better, but we are only required to determine if the state court unreasonably determined the facts from this evidence. I would find that it did not, so I would affirm the denial of the writ. The Supreme Court in *Williams v. Taylor*, 529 U.S. 362, 412, 120 S. Ct. 1495, 1523 (2000), held, in connection with the language in 28 U.S.C. § 2254(d)(1), that "an *unreasonable* application of federal law is different from an *incorrect* or *erroneous*

application of federal law." The definition of "unreasonable" should be the same under § 2254(d)(2). Therefore, even if we think the state court's determination of the facts was incorrect or erroneous, it still is a reasonable decision, as found by the district court here.